

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)



Applicant's or agent's file reference 29501/38616A	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/US 03/06995	International filing date (<i>day/month/year</i>) 07.03.2003	Priority date (<i>day/month/year</i>) 20.11.2002
International Patent Classification (IPC) or both national classification and IPC B65D35/36		
Applicant COSMOLAB, INC. et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of 2 sheets.

3. This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 01.06.2004	Date of completion of this report 02.11.2004
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**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/US 03/06995

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-8 as originally filed

Claims, Numbers

1-14 received on 01.06.2004 with letter of 19.05.2004

Drawings, Sheets

1/1 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-14
	No: Claims	
Inventive step (IS)	Yes: Claims	1-10,14
	No: Claims	11-13
Industrial applicability (IA)	Yes: Claims	1-14
	No: Claims	

2. Citations and explanations

see separate sheet

1). The invention relates to a cosmetic container for holding a cosmetic mass and connecting to an applicator head, comprising a collapsible reservoir comprising a generally cylindrical wall sealed at one end; and a cylindrical neck joined to said reservoir, the outer wall of said neck comprising an outer coupler, and the interior of said neck communicating with the interior of said reservoir.

Such a cosmetic container is known from document WO-A-0210029, being the closest prior art document. The subject-matter of present independent claims 1 and 14 differs from what is described in document WO-A-0210029 in that the inner wall of said neck comprises an inner coupler. This provides an improved coupling for the container of the invention. The combination of the features of each of the independent claims 1 and 14 is neither known from, nor rendered obvious by, the available prior art. Therefore, the subject-matter of independent claims 1 and 14 is new and inventive (Articles 33(2) and 33(3) PCT). Consequently, the subject-matter of dependent claims 2 to 10 fulfil as well the requirements of novelty and inventive step. Furthermore, claims 1 to 14 are considered as susceptible of industrial application.

2). Having regard to independent claim 11, document WO-A-0210029 discloses a cosmetic applicator for holding and applying a cosmetic mass, comprising a collapsible reservoir comprising a generally cylindrical wall sealed at one end, and a cylindrical applicator head joined to said reservoir, the interior of said applicator head communicating with the interior of said reservoir, said applicator head comprising a rigid base portion adjacent said reservoir, a tip portion comprising one or more discharge openings, and the outer wall of said applicator head comprising an outer coupler (see in particular page 2, line 26, to page 4, line 11, and figures 1 to 8).

The subject-matter of independent claim 11 differs from what is described in document WO-A-0210029 in that a plurality of fibers are disposed on the outer surface of said tip. However, this feature has already been employed for the same purpose in a similar applicator, see document US-A-5 462 798, abstract. It would be obvious to the person skilled in the art, namely when the same result is to be achieved, to apply this feature with corresponding effect to an applicator according to document WO-A-0210029, thereby arriving at an applicator according to claim 1, without the use of inventive skill. Thus, the subject-matter of claim 1 does not involve an inventive step and does not satisfy the criterion set forth in Article 33(3) PCT.

3). Document WO-A-0210029 discloses as well the feature of dependent claim 13 (see

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page 2, line 28). Therefore, the subject-matter of dependent claim 13 does not provide a positive contribution to inventive step, and claim 13 does not satisfy the criterion set forth in Article 33(3) PCT.

4). Concerning the feature of dependent claim 12, document WO-A-0210029 discloses as well a cap removably engaged with the outer coupler (see page 3, line 21, to page 4, line 11). Although document WO-A-0210029 does not disclose whether the cap forms a water-tight seal, it appears that this feature is merely one of several straightforward possibilities from which the skilled person would select, in accordance with circumstances, without the exercise of inventive skill, in order to solve the problem posed. Therefore, the subject-matter of dependent claim 12 does not provide a positive contribution to inventive step, and claim 12 does not satisfy the criterion set forth in Article 33(3) PCT.